

## REMARKS

Claim 56 stands rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended claim 56 to define the polymer sheet as a polyethylene sheet. Reconsideration and withdrawal of the rejection is respectfully requested.

Claims 1-11, 13-16, 18, 19, 25, 26, 29-35, 41, 42, 44, 46, 48-53, 55, 56, 63-65 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Reiger (U.S. Patent No. 6,202,348) in view of Berlit, *et al.* (GB 2,073,567 A). The Examiner states that Reiger discloses a root growth barrier that provides a layer of root-tip-trapping material snugly fitted to a layer of root-impenetrable material. However, as the Examiner points out, Reiger does not disclose that these materials may be bonded together. Therefore, the Examiner cites the Berlit patent, which discloses that thermoplastics may be laminated together. (*See* Office Action, p. 2, item 4).

Applicant claims a root growth barrier, and a method for using same, that comprises a layer of root-tip-trapping material that is bonded to a layer of root-impenetrable material. (claims 1, 29, 46, 48 and 49). Inherently, the root-tip-trapping material is any fabric that has the capacity to trap an actively growing root tip between the fabric's fibers. (Specification, p. 6, ln. 7-10).

Berlit does not disclose, teach, motivate or suggest that a root-tip-trapping fabric may be bonded to a root impenetrable material. Berlit merely teaches that smooth rigid thermoplastics may be laminated in layers, wherein each thermoplastic layer has a different characteristic. For example, Berlit teaches that the outer layer of a flower pot may be decorative and the inner layer of the flower pot may be opaque. (Berlit, p. 1, ln. 28-29). The invention of Berlit is for a thin-walled plant container of a thermoplastic synthetic material. (Berlit, p. 1, ln. 5-6). Berlit discloses that the individual layers of the laminate may be from different thermoplastic synthetic materials. (Berlit, p. 2, ln. 2-4). Berlit does not teach, suggest, motivate or disclose that any of the layers of laminate may be a root-tip-trapping fabric. Berlit's disclosure of a flower pot having smooth inner and outer

surfaces formed by melting thermoplastics in a laminating process is not at all similar to Applicant's claimed invention of a root-tip-trapping material bonded to a root-impenetrable layer. Berlit fails to disclose, teach, motivate or suggest that a root-tip-trapping fabric may be bonded to a root-impenetrable layer. Berlit merely discloses that two smooth surfaced root-impenetrable layers may be laminated together only when both layers are formed of a thermoplastic material to form a rigid flower pot.

Furthermore, Reiger teaches against bonding a root-impenetrable layer to a root-tip-trapping layer. Reiger teaches and discloses that a root-tip-trapping material may be placed in a "container, preferably a pot and more preferably a plastic pot." (Reiger, col. 7, ln. 44-45). Reiger teaches that:

"one of the advantages of utilizing a sleeve with first and second ends is that, as shown more clearly in FIG. 10, once liner 120 and growing media 125 along with the plant grown in the pot are removed from therefrom, liner 120 can be easily removed from the growing media. Another advantage of a sleeve with first and second ends is that there is no need to cut the fabric to remove it from the growing media.

(Reiger, col. 8, ln. 16-24).

Reiger teaches that the liner must be removable from the pot so that the fabric bag may be peeled away from the growing media. That is why Reiger does not teach, suggest, motivate or disclose that the root-impenetrable layer may be bonded to the fabric sleeve, which is a root-tip-trapping layer. Therefore, Reiger does not motivate one having ordinary skill in the art to discover a way to bond the pot to the fabric bag, which Reiger teaches must be removable from the pot.

Furthermore, there is no motivation to combine Reiger with Berlit because Berlit discloses a rigid flower pot and Reiger teaches that the bag must be removable by peeling the bag away from the root ball, as discussed above. Because the Berlit flower pot is rigid, it cannot be peeled away from the root ball as required by Reiger. Therefore, there is no motivation to combine Reiger with Berlit nor can there be any expectation of success, since there can be no success in merely laminating thermoplastics together as described by Berlit, because the resulting rigid flower pot cannot be peeled away from the root ball.

To establish a *prima facie* case of non-obviousness, there must be (1) some suggestion or motivation, either in the references themselves or in the knowledge generally available to one having ordinary skill in the art, to modify or to combine reference teachings; (2) a reasonable expectation of success; and (3) all the limitations of the claimed invention disclosed. See MPEP, § 2143.

All the limitations of Applicant's claimed invention are not disclosed because neither Reiger nor Berlit disclose, teach, motivate or suggest that a root-tip-trapping fabric may be bonded to a root-impenetrable layer as claimed by Applicant.

There is no expectation of success in combining Berlit and Reiger because Reiger teaches that the bag must be peeled away from the root ball, and Berlit discloses a rigid flower pot that cannot be peeled away from the root ball. Since the flower pot cannot be peeled away from the root ball, there can be no success in combining these references.

There is no motivation to combine Berlit with Reiger, because Reiger teaches that the fabric bag must be removed from the pot, so there would be no motivation or expectation of success to look to another reference that would teach that the "pot" is bonded to the fabric bag of Reiger.

Because each and every limitation of Applicant's claimed invention has not been disclosed by Reiger and Berlit, and because there can be no success, much less an expectation of success, in combining these two references, and because there is no motivation to combine Reiger with Berlit, Applicant respectfully asserts that a *prima facie* case of obviousness is not made.

Claims 1, 29, 46, 48 and 49 are independent claims that include the limitation of a layer of a root-tip-trapping material bonded to a layer of root-impenetrable material. Each of the other claims rejected under § 103 over Reiger in view of Berlit depend from these independent claims. Because Reiger and Berlit do not combine to provide a *prima facie* case of obviousness, Applicant respectfully requests reconsideration and withdrawal of the rejection.

Claims 57, 59-62 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Reiger (US 6202348) in view of Berlit et al. (GB 2,073,567 A) and Flasch, Jr. (US 5,852,896).

Claims 20, 23, 27, 28, 36-40, 47 stand rejected under 35 U.S.C. 103(a) as being unpatentable

over Reiger as modified by Berlit et al. as applied to claim 1 above, and further in view of Flasch, Jr. (US 5,852,896).

Claims 57 and 47 are independent claims that include the limitation of a layer of a root-tip-trapping material bonded to a layer of root-impenetrable material. For the reasons given above, Reiger and Berlit do not disclose, teach, motivate or suggest that a root-tip-trapping material may be bonded to a root-impenetrable layer. Claims 59-62 depend from claim 57. Claims 20, 23, 27 and 28 depend, either directly or indirectly, from claim 1. Claims 36-40 depend either directly or indirectly from claim 29. Therefore, for the reasons previously given, Applicant respectfully asserts that a *prima facie* case of obviousness has not been provided concerning independent claims 1, 29, 47 and 57 and therefore, these claims are in condition for allowance. Therefore, those rejected claims depending from claims 1, 29, 47 and 57 are also in condition for allowance. Reconsideration and withdrawal of the rejection for these claims is respectfully requested.

Claim 12 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Reiger as modified by Berlit et al. as applied to claims 1, 4, 10, 11 above, and further in view of Thomas (US 5311700).

Claims 17, 21, 22, 24, 54 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Reiger as modified by Berlit et al. as applied to claims 1, 4, 10, 11 above, and further in view of Van der Goorbergh (EP 300578 A3).

Claim 43 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Reiger as modified by Berlit et al. as applied to claim 29 above, and further in view of Kalpin (US 3,094,810).

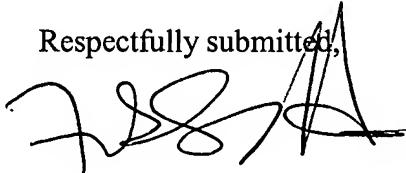
Claim 45 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Reiger as modified by Berlit et al. as applied to claims 29, 33 above, and further in view of Billings (US 6,223,466 B1).

Claims 58 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Reiger as modified by Berlit et al. and Flasch, Jr. as applied to claim 57 above, and further in view of Van der Goorbergh (EP 300578 A3).

Each of the above claims depend, either directly or indirectly, from independent claims 1, 29, 46, 47, 48, 49, and 57. For the reasons given above, these independent claims are in condition for allowance. Therefore, the claims depending either directly or indirectly from these claims are also in condition for allowance. Applicant respectfully requests reconsideration and withdrawal of the rejections for the dependent claims that depend from claims 1, 29, 46, 47, 48, 49, and 57.

Applicant respectfully submits that all claims in the present application are entitled to allowance and such action is earnestly solicited. If the Examiner determines that a telephone conference would expedite the examination and allowance of this application, the undersigned requests that the Examiner call at his convenience. In the event that there are additional charges in connection with the filing of this Response, the Commissioner is hereby authorized to charge the Deposit Account No. 50-0714/WHIT/0002 of the firm of the below-signed attorney in the amount of any necessary fee.

Respectfully submitted,



Frank J. Campigotto  
Attorney for Applicant  
Registration No. 48,130  
STREETS & STEELE  
13831 Northwest Freeway, Suite 355  
Houston, Texas 77040  
(713) 939-9444

